IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.809 OF 2005

Indira Rashtriya Kamgar Sahakari
Society Limited ..Petitioner.

Vs.

Channappa Mallappa Waghmare & Ors...Respondents.

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Mr.P.M.Patel for the Petitioner.
Mr.V.R.Giri with Mr.R.R.Mahegaonkar for Respondent Nos.1, 2 to 4, 6, 7, 9 to 13, 15, 17 to 20, 21, 22, 24, 25, 28 to 31, 33, 35, 37 to 39, 42, 45, 46, 47, 48.
Mr.N.C.Patel, AGP for Respondent Nos.54 and 55.

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CORAM : DR.D.Y.CHANDRACHUD, J.

28th March, 2005.

P.C. :

1. Rule, made returnable forthwith by consent. Counsel appearing on behalf of the Respondents waive service. By consent, taken up for hearing and final disposal.

2. The Petitioner is a society registered under the Societies' Registration Act, 1860 and was engaged in the loading and unloading of railway

wagons at the material time to which the present dispute relates. Respondent Nos.1 to 53 were workmen and between 1978 and 1980 some of them were engaged in loading and unloading of railway wagons. The Petitioner is a co-operative society of the employees and was formed to eliminate middlemen. The society was taking the work of loading and unloading from the railways, RCF Ltd. and other establishments with the object of distributing earnings made by the society by way of salary to its employees and by way of annual dividends to the member - employees. The Petitioner had a representative union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 operating in its establishment with whom a settlement had been signed governing the service conditions with effect from 1st April, 1980. Wadibunder Carnacbunder Mathadi Kamgar Kalyan Sabha which was another trade union raised an industrial dispute (Reference (IT) 71 of 1980) which was referred to adjudication. The reference was adjudicated upon by an award dated 30th July, 1990. The reference was allowed and the Industrial Tribunal partially granted relief to the workmen in terms of a wage rise of

10% in their salaries from April 1978 to 18th March, 1980. It has been stated before the Court that the award was challenged in writ proceedings before the Court but, at the stage of hearing and final disposal, the rule was discharged.

3. After the award of the Industrial Court, an application was filed under Section 33-C(2) claiming for each employee an amount of Rs.2,19,414.96 as a 10% increase in salary for the period 1978 to 1985. The Petitioner filed its written statement. It has been stated that the Petitioner produced documents, among them being the 'Mathamel' which recorded the salaries/wages earned based on the work done. The Respondent workmen chose not to lead any oral evidence at all. On behalf of the Petitioner its secretary H.S.Kanse stepped into the witness box to depose. By its impugned order dated 30th October, 2004 the Labour Court has granted a uniform payment of Rs.3,960/- to all employees for the years 1978, 1979 and 1980.

4. On behalf of the Petitioner, the order of the Labour Court has been challenged on the ground that none of the Respondent workmen stepped into the

witness box to adduce any evidence in support of the claim under Section 33-C(2). Moreover, it was submitted that the entire order of the Labour Court is based on a mere presumption that every workman was drawing a salary of Rs.1,000/- per month and it was urged that this assumption could not have been drawn even on the stated hypothesis of the Labour Court that some of the workmen were getting between Rs.14/- to Rs.21/- per day. Moreover, it was urged that the daily rated, monthly rated and piece rated employees could not possibly be drawing the same wages, despite which a uniform assumption has been made by the Labour Court. Moreover, it was submitted that though the award of the Industrial Tribunal had granted a 10% rise in salary for the period between April 1978 and 18th March 1980, the Labour Court in proceeding under Section 33-C(2) has passed an order for the entire calender year 1978, 1979 and 1980.

5. In order to deal with these submissions, it would at the outset be necessary to advert to the award of the Industrial Court dated 30th July, 1990 in Reference (IT) 71 of 1980. The award of the Industrial Tribunal notes that a charter of demands

had been submitted on 26th April, 1978. The Tribunal while adjudicating upon the charter of demands allowed to the workmen a 10% increase in wages for the period from the date of the demand until 18th March, 1980. The Labour Court while deciding upon the claim under Section 33-C(2) noted that the applicant workmen had not produced any document to show that they were drawing particular wages in 1978. None of the applicant workmen stepped into the witness box. The Labour Court accepted the plea of counsel for the Petitioner that there was no evidence to show that the workmen have been drawing regular salaries and held that there was no evidence about the wages of the applicant workmen. The Labour Court noted from the evidence of the witness for the Petitioner that there was no fixed salary for the applicant workmen and during the period 1978-80 the monthly earning of a person was about Rs.500 to 600/- depending upon the wagons loaded and unloaded.

6. The Labour Court noted in paragraph 14 of its order that some of the workmen were getting between Rs.14/- to Rs.21/- per day. From this, the Labour Court deduced that each workman was getting near

about Rs.1,000/- per month as wages. How this conclusion could have been drawn defies explanation. Even on the assumption that every workman was receiving the highest rate of Rs.21/- per day, the total emoluments for 26 days of work would work out to Rs.546/-. On this amount of Rs.1,000/- per month the Labour Court then allowed an increase of 10% for the entire calender years 1978, 1979 and 1980. The period for which the computation has been done by the Labour Court is ex facie incorrect because the award of the Tribunal would show that the benefit had been granted to the workmen for the period 26th April, 1978 (the date of the charter of demands) until 18th March, 1980. That apart, the Labour Court has basically erred in proceeding on the assumption that the wages for every workman would be Rs.1,000/- per month on which a 10% increase would have to be granted. Counsel appearing on behalf of the Petitioner stated that even now the Petitioner is ready and willing to produce the Provident Fund Register which is in the possession of the Petitioner before the Labour Court, so an assessment can be made of the actual number of days for which every workman has worked over the aforesaid period and of the

actual wages drawn so that an enhancement as awarded by the Tribunal in its award dated 30th July, 1990 can be arrived at. The Labour Court was perhaps handicapped by the circumstance that the matter is almost 26 years old and none of the workmen had stepped into the witness box to produce any evidence in support of the claim. This difficulty, however, cannot be overcome by making hypothetical assumptions which in any event are erroneous. In the circumstances, conscious as the Court is of the need for a final determination of the claims of the individual workmen, a remand is nonetheless required. On remand, the Petitioners have assured the Court that they shall produce the Provident Fund Register and all other material in their possession and custody that would enable the Labour Court to make a determination of the wages that were drawn by the workmen for the relevant period so that a computation of the amounts that are due and payable can be made. In the circumstances, the impugned order of the Labour Court dated 30th October, 2004 is quashed and set aside. The application, being (IDA) 261 of 2002, is restored to the file of the Labour Court. The parties shall appear before the Labour Court for

receiving directions on 11th April, 2005. The Labour Court shall set down a time schedule for the early disposal of the application and shall in any event endeavour to do so on or before 30th September, 2005. In consequence of the aforesaid direction, the recovery certificate dated 29th January, 2005 issued by the Assistant Commissioner of Labour, Mumbai shall also stand quashed and set aside.

The Petition shall stand disposed of in the aforesaid terms. There shall be no order as to costs.